THE WORK OF THE SECOND HAGUE CONFERENCE

THE second Hague Conference came to an end on October 18, 1907, after sitting for more than four months. In the popular mind the Conference has been dismissed as a failure. No sensational actions were taken, and the quiet and solid work of a group of international lawyers has had little attraction for the general public. It is, however, worth while to make a plain statement of what the Conference did and did not accomplish.

The first Hague Conference in 1899 was essentially a peace conference. The question of partial disarmament was put at the head of the Russian program for that meeting, and when no scheme embodying this proposal received favorable consideration, the conference was called a failure. But after eight years we know that it was not a failure, and that it will rank as one of the most important meetings in the world's history.

In the Russian program for the Conference of 1907 the subject of partial disarmament was not included. Great Britain, however, presented this subject to the conference, which contented itself with the passage of a resolution reaffirming a similar resolution passed in 1899. The text of this resolution is as follows:

"The Second Peace Conference confirms the resolution adopted by the conference of 1899 with regard to the limitation of military burdens, and in view of the fact that such burdens have since then considerably increased in almost all countries, the Conference declares that it is highly desirable that governments resume the serious examination of this question."

This may be looked upon by some as a dismissal of the whole question, but it is hard to see what more could have been done. The Conference was composed of representatives of forty-four countries, of which hardly more than eight or ten are seriously affected by heavy military burdens. Any positive action in favor of partial disarmament carried through by a majority composed of minor European nations and of South and Central American countries would have made the Conference a subject of ridicule.

In the Conference forty-four countries were represented by nearly two hundred delegates. A body of this size was too large for any effective collective action, and the real work was done in the committees and sub-committees into which the members were divided.

Four committees were created for the consideration of the four groups of subjects presented by the Russian program as a basis for the work of the conference. These subjects were:

(1) Arbitration; international commissions of inquiry, and questions connected therewith; questions relating to naval prizes.

(2) Improvements to be made in the convention of 1899 relating to the laws and customs of war on land; renewal of the declarations of 1899; opening of hostilities; rights and obligations of neutrals on land.

(3) Bombardment of ports, towns, and villages by naval forces; placing of submarine mines; belligerent vessels in neutral ports; alteration of the convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention.

(4) Maritime Warfare: conversion of merchant vessels into vessels of war; private property at sea; delays of grace; contraband; blockade; destruction of neutral prizes; provisions relating to war on land applicable to naval warfare.

Each delegate to the Conference was a member of some one of these committees. The first, second and third committees each separated into two sub-committees, but the fourth committee acted as one body. In each sub-committee *comités d'examen* were appointed to put in final form resolutions agreed upon in sub-committee. A resolution adopted in a sub-committee was, after it had been put in satisfactory form, presented to the whole committee, and if there agreed to was, after being brought into harmony with the other work of the committee by a *comité de redaction,* submitted to the full Conference.

The work of the Conference is embodied in thirteen conventions, two declarations, one resolution, and four *vœux* or "pious wishes." These documents are as follows:

(1) Convention for the pacific regulation of international conflicts.

(2) Convention concerning the limitation of the employment of force for the collection of contractual debts.

(3) Convention relative to the opening of hostilities.

(4) Convention concerning the laws and customs of war on land.

(5) Convention concerning the rights and duties of neutral powers and persons in case of war on land.

(6) Convention relative to the régime of enemy merchant vessels upon the beginning of hostilities.

(7) Convention relative to the transformation of merchant vessels into vessels of war.

(8) Convention relative to the placing of submarine automatic contact mines.

(9) Convention concerning bombardment by naval forces in time of war.

(10) Convention for the adaptation to maritime warfare of the principles of the Geneva Convention.

(11) Convention relative to certain restrictions upon the exercise of the right of capture in maritime warfare.

(12) Convention relative to the establishment of an international prize court.

(13) Convention concerning the rights and duties of neutral powers in case of maritime war.

The two declarations relate respectively to the prohibition of the use of balloons for throwing projectiles or explosives, and to obligatory arbitration. The resolution refers to a limitation of military burdens, and has been quoted above. The *vœux* relate to (1) a court of arbitral justice; (2) the maintenance of commercial and industrial relations between the populations of belligerent and neutral countries in case of war; (3) military burdens imposed upon persons not citizens of the country in which they reside; (4) adoption of rules of maritime warfare by a future conference.

ARBITRATION

The first convention is an enlarged and in many ways improved edition of the convention adopted by the first peace conference for the peaceful adjustment of international differences. No new principles have been introduced into this convention, which deals with the permanent court of arbitration at the Hague, international commissions of inquiry, the tender of good offices, and mediation.

As is well known the permanent court of arbitration created by the convention of 1899 is permanent only in name. It is composed of not more than four persons appointed by each of the signatory powers for a term of six years. The members of this court do not sit as a collective body, but when two or more nations wish to summit a question to arbitration such nations select by mutual agreement the members of the court whom they desire to try their case. A new court for the trial of cases is thus constituted for each new case which arises; the permanent court furnishes only a ready prepared list of available judges.

The delegates of the United States presented to the recent Conference a proposal for the creation of a standing court by the side of the present so-called permanent court. This project was universally approved in principle, but failed of adoption because of the impossibility of reaching an agreement as to how the court should be organized. It was proposed that the several countries should be divided into groups, the eight great powers to have judges sitting constantly in the court, the smaller powers having judges therein for

one, two, four or ten years out of twelve, in proportion to their relative importance. This proposal was the object of violent opposition upon the part of the smaller powers, and was defeated largely by the countries of South America, which acted in this matter under the leadership of Ruy Barbosa, the first Brazilian delegate. The Conference found it possible only to recommend the adoption of the project under discussion, "as soon as an accord can be reached concerning the choice of judges and the constitution of the court." The project so recommended provides for a court of arbitral justice, whose members should be chosen as far as possible from among the members of the permanent court of arbitration; this court should annually designate three of its members to sit constantly and should meet at least once every year unless the special delegation of three members should think such a meeting unnecessary. It would provide a body ready at all times to hear cases of arbitration, without the necessity of erecting practically a new court for each case which arises.

The American delegation also took an important part in the efforts made to obtain the adoption of a treaty providing for obligatory arbitration with reference to a limited number of subjects. Baron Marschall, the first German delegate, was the most vigorous opponent of such a treaty. He contended that a treaty for obligatory arbitration with reference to a few relatively unimportant subjects would not possess sufficient force to command respect, and that progress in the matter could be better made by the conclusion of separate treaties between the several countries. The Conference was unable to adopt any convention with reference to this subject, but unanimously agreed: "(1) To recognize the principle of obligatory arbitration; (2) To declare that certain differences, and notably those relating to the interpretation and application of the provisions of international conventions, are susceptible of being submitted to obligatory arbitration without any restriction."

While the Conference refused to adopt any general scheme of obligatory arbitration, its second convention practically establishes obligatory arbitration with reference to one important subject. By this convention the contracting powers declare that they will not have recourse to armed force for the recovery of contractual debts claimed against the government of another country as due to their citizens. This provision is not to apply, however, if the debtor state refuses, or fails to respond to an offer of arbitration, or in case of an acceptance, renders impossible the establishment of a compromise, or, after arbitration, fails to conform to the sentence rendered. This is an attenuated form of the so-called Drago doctrine, which opposed

the use of force for the collection of debts under any circumstances. The adoption of this principle forms the most important step in advance taken by the conference towards the peaceful settlement of international differences.

DECLARATION OF WAR

At the time of the commencement of the Russo-Japanese war there was a great deal of discussion regarding the Japanese attack upon the Russian fleets before there had been a formal declaration of war. It was generally agreed among the authorities upon the subject that a declaration of war was not in practice necessary before the commencement of warlike operations. But it was at the same time recognized that a declaration of war is in such a case desirable, and the Institute of International Law, at its meeting at Ghent in September, 1906, passed a strong resolution in favor of such a declaration. The third convention of the recent Conference adopts this principle, which is, as was said above, a modification of present international practice. The contracting powers recognize that hostilities among themselves should not commence without a previous and unequivocal notice. Article two of the convention provides that war shall not have effect with reference to neutrals until after the reception of such notification, but weakens and practically nullifies this clause by providing that a neutral may not take advantage of absence of notice if it can be clearly shown that he knew of the state of war. Neutrals have important duties which begin with the commencement of war, and it would be well if specific notice were always required to bind them.

RIGHTS AND DUTIES OF NEUTRALS

The subject of neutral rights and duties was not discussed by the first Hague Conference, but was recommended by that body as a matter for the consideration of a future conference. Two conventions of the recent Conference treat of this subject. The fifth convention, which deals with the rights and duties of neutrals in case of war on land, declares first of all the inviolability of neutral territory; forbids belligerents to cross such territory with troops or convoys, to establish thereon radio-telegraphic stations or other such establishments for an exclusively military purpose; and prohibits the enrollment of troops in neutral territory by a belligerent. The thirteenth convention, which deals with the rights and duties of neutrals in case of maritime warfare, forbids, among other things, the use of neutral waters as a base of naval operations by a belligerent. Neither of these conventions adds anything new to the existing

international practice, but it is a great gain to have the law embodied in definite terms. With reference to the important subjects of contraband of war and blockade it was found impossible to do anything. No positive step in advance was taken towards the protection of neutral commerce on the sea, but the Conference did express the wish that in case of war the competent civil and military authorities should make it their especial duty to protect the maintenance of commercial and industrial relations between the populations of belligerent and neutral states.

WAR ON LAND

The fourth convention agreed upon by the Conference is but a revision of the convention concerning the laws and customs of war on land, adopted by the first Hague Conference in 1899. The changes, although important, do not alter materially the principles of the earlier convention. The declaration prohibiting the throwing of projectiles and explosives from balloons until the meeting of a third conference is but the renewal of a similar declaration made for a term of five years by the conference of 1899, and which consequently expired in 1904. Some people consider it inconsistent to prohibit the use of balloons and to permit the use of submarine boats and mines. It should be said, however, that in warfare it is the object of an army to put *hors de combat* the members of an opposing force. The use of balloons is as yet forbidden not because of tenderness towards the hostile armies, but because it is thought that they are not accurate enough to injure the enemy alone; i. e., because of the danger of their injuring non-combatants.

NAVAL WARFARE

Seven of the conventions adopted by the Conference deal with the subject of naval warfare. The sixth convention provides that merchant vessels of a belligerent found in an enemy port at the time when hostilities begin shall be permitted freely to proceed to their ports of destination. The seventh convention relates to the transformation of merchant vessels into vessels of war, and declares that a vessel so transformed shall bear the distinctive external signs of a war vessel, shall be under the command of a regularly commissioned officer and subject to military discipline; and requires that it observe, in its operations, the laws and customs of war. The eighth convention deals with the subject of submarine automatic contact mines, and forbids (1) the placing of unanchored automatic contact mines unless constructed in such a manner as to become harmless within an hour after they have been placed; (2) the placing of anchored

contact mines unless they become harmless when they break from their anchors; (3) the use of torpedoes unless they become harmless as soon as they have failed of accomplishing their purpose; and also the placing of automatic contact mines before the ports or along the coast of an adversary for the sole purpose of interfering with commerce. The ninth convention forbids the bombardment by naval forces of undefended ports, towns, villages, habitations, or vessels of an enemy. Military and naval establishments, war vessels in port, and undefended places refusing to comply with requisitions for food or provisions necessary for the hostile naval force, may, however, be bombarded; but such a place may never be bombarded because of its refusal to pay a pecuniary contribution. These four conventions practically embody present international practice, but put that practice in definite written form.

The tenth convention is a revision of the convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention. By the Geneva Convention of 1864 nearly all of the civilized nations bound themselves to certain rules as to the treatment of sick and wounded soldiers. Sick and wounded were to be collected and given medical attention. Field and military hospitals, medical and surgical stores, surgeons and others in attendance upon the wounded, were neutralized. A white flag with a red cross was adopted as the emblem of hospitals and hospital corps. No provision was made by this convention for the care of wounded in naval warfare, and regulations for this purpose were drawn up by a conference which met at Geneva in 1868; but the convention of 1868, while accepted in principle, was never ratified. The first Hague Conference in 1899 adopted a convention for the adaptation to naval warfare of the principles of the Geneva Convention of 1864. But methods of caring for sick and wounded have changed since 1864, and in 1906 a conference of technical experts met at Geneva and adopted a new and much more detailed convention with reference to the care of persons wounded in warfare on land. It then became necessary that the second Hague Conference should revise the convention of 1899 in such a manner as to bring it into accord with the more complete regulations of the Geneva Convention of 1906.

According to the rules of war on land private property is respected, and may not be taken by an enemy except upon payment of compensation. The object of war is to break down the resistance of hostile armies, not to injure non-combatants. Acting upon this principle the American delegates in both the first and second Hague Conferences proposed that private property should be made inviolable on sea as well as on land. But the destruction of a nation's maritime commerce

in war is still considered too effective a weapon to be given up by strong naval powers. The Conference contented itself in its eleventh convention with a declaration of the inviolability of unofficial postal correspondence and with the formal exemption from capture of coast fishing vessels and vessels engaged in local navigation on a small scale. The immunity of fishing vessels from capture has for some time been established in international practice.

An important step towards the better protection of private property at sea has, however, been taken by the convention for the creation of an international prize court. Heretofore the legitimacy of a prize has always been finally determined by the courts of the captor, and under such circumstances favor is apt to be shown to the captor as against neutral or enemy owners of private shipping taken as prize. The jurisdiction of the new prize court is confined to property of a neutral taken as prize, to enemy property laden on neutral vessels, and to enemy vessels captured in the territorial waters of a neutral power, or taken in violation of treaty provisions in force between the belligerents or of the prize regulations of the captor; its powers thus relate almost entirely to the decision of cases affecting neutral vessels taken as prize. In the organization of the international prize court the same difficulties were faced as those which proved insurmountable in the project of establishing a court of arbitral justice, but here the difficulties were surmounted. The court is composed of fifteen judges who are appointed for six years; those named by the eight great powers are always members of the court, but those named by the smaller powers are divided into six groups and have seats for part of the time only, the classification being based upon the relative size and importance of the several countries. A belligerent power may in every case have a judge in the court during the trial of cases arising out of a war to which it is a party. In the trial of any case in the international prize court the decision will rest with judges selected by the neutral powers, whose bias would naturally be against the belligerent captor, for the interests of neutrals are opposed to the making of captures.

The second Hague Conference has left unsolved many important questions of maritime international law, but much has been done in the definite statement of the law for a large part of this field. With reference to the general subject of naval warfare the conference expressed the wish that "the elaboration of a regulation with reference to the laws and customs of maritime warfare should figure in the program of the next conference, and that in all cases the powers should, as far as possible, apply to naval warfare the principles of the convention relative to the laws and customs of war on land."

A THIRD CONFERENCE

Finally the Conference recommends to the powers the assembling of a third peace conference eight years hence, and suggests the careful preparation of a definite program before the meeting of the next conference. For this purpose it suggests the appointment, two years in advance of the meeting, of a committee to gather propositions submitted by the several governments, to make a careful study of such propositions, and to propose a method for the organization and procedure of the conference itself. It is an undoubted fact that the work submitted to the recent Conference was ill-prepared, and that much time was wasted because the necessary preliminary work had not been done. The membership of the Conference also was so large as to make its procedure too cumbersome. It is hoped that when the next conference meets it will have ready for its consideration well-defined plans and drafts of proposals to be presented to it, and that a scheme of procedure may be devised which will be both expeditious and efficient.

RESULTS OF THE CONFERENCE

As has been indicated above, the important advance steps taken by the second Hague Conference have been those with reference to the forcible collection of debts, declaration of war, and the establishment of an international prize court. Its success in these matters is enough to entitle the conference to a high rank among international gatherings, but the excellent work done in other branches of international law must not be overlooked. With reference to two important matters in which the conference failed to achieve results, limitation of armaments and compulsory arbitration, it is questioned whether any action would not have been more detrimental than beneficial. It may almost be said that the success of the conference has been due as much to what it did not do as to what it did accomplish.

The Hague Conferences are the legislative bodies of the union of nations. Entirely aside from what they have accomplished it would have been worth while for the nations of the earth to come together in peaceful conference for the discussion of matters of general interest. However, the work of the conferences has already wrought a revolution throughout the whole field of international law. Ten years ago international law was almost entirely unwritten, and was only a "bundle, more or less confused, of rules to which nations more or less conform," but now it has to a large extent been embodied into definite written principles. This in itself is an important step towards peaceful international relations, for it is an

undoubted fact that clearness in the definition of legal rights and duties reduces the possibility of conflict. In the Hague court and in the international prize court competent tribunals have been established for the settlement of international difficulties in accordance with legal principles.

So long as mortals inhabit this earth it is not expected that wars will cease, but the Hague conferences have made easier the peaceful settlement of international difficulties, and in case of hostilities have bound the nations to practices which minimize the horrors of war and safeguard the interests of neutral powers. Nations may still go to war, but the rules adopted for the conduct of warfare restrict in as far as is now possible the injury and harm to the armies and navies of the belligerent powers.

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